2025 INSC 1071

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
[@ SLP (C) NO. 13348 OF 2025]

C.P. FRANCIS **... APPELLANT(S)**

VERSUS

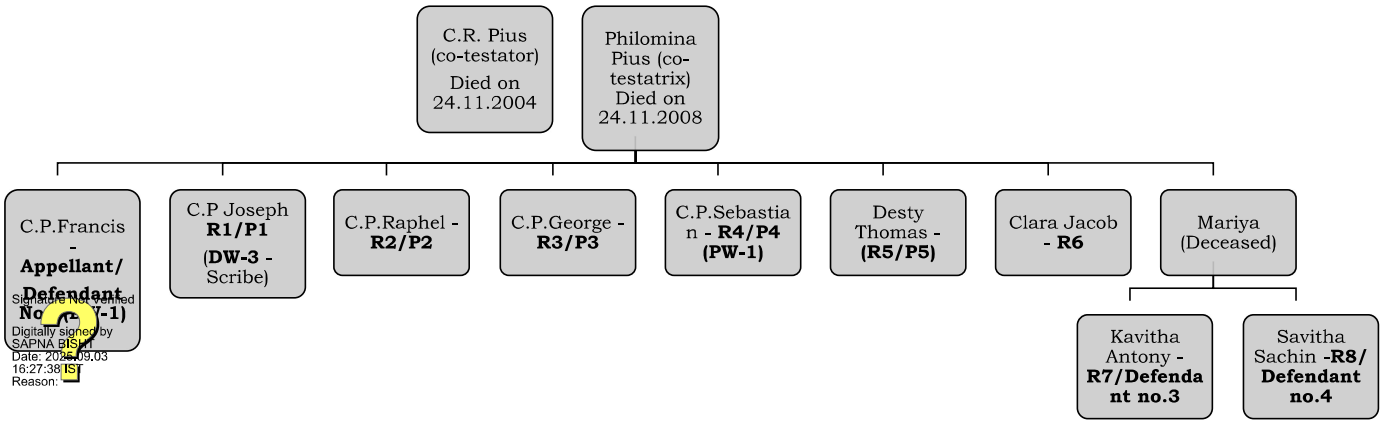
C.P. JOSEPH AND OTHERS **... RESPONDENT(S)**

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.

2. CR Pius and Philomina Pius possessed, as absolute owners, an extent of 7.875 cents of property in survey no. 60/6 of Elamkulam village and 3.233 cents in survey no. 60/6 of Elamkulam village, Kanyanoor Taluk, Ernakulam District, as described in plaint A and B schedules. On 24.11.2004, CR Pius died. On 27.11.2008, Philomina Pius died. The children/grandchildren of Pius and Philomina are the parties to the present litigation, and their genealogy is illustrated as follows:



3. On 15.12.1999, Philomina Pius executed a registered settlement deed in favour of CP Sebastian/Fourth Plaintiff, whereunder, she has settled an extent of 4 cents out of 7 cents in favour of the fourth plaintiff and retained 3.235 cents (Plaint B Schedule). Pius, admittedly, has been the absolute owner and possessor of Plaint A schedule property. On 27.01.2003, CR Pius and Philomina Pius executed the registered joint will in favour of CP Francis/Appellant for the Plaint A and B schedule properties. Antony (DW6), husband of Kavitha Antony/Defendant No. 3, and Ponsy (DW5), wife of Appellant, have subscribed their signatures as attestors. The salient features of the will dated 27.01.2003 are noted as follows:

3.1 All three daughters have been given their share and married off. The fourth plaintiff was given 4 cents of the land as per the settlement deed dated 15.12.1999. Hence, they are not entitled to any right in the plaint schedule.

3.2 The properties in the plaint schedule A will be bequeathed to D1 after the death of one of the testators, and after the death of the second testator, properties in the plaint schedule B will be bequeathed to the Appellant.

3.3 That Appellant has to pay Rs.1,00,000/- to Maria, Rs. 50,000/- to daughter Thresia, Rs. 50,000/- to daughter Clara, Rs. 1,00,000/- to Son Joseph, Rs. 1,00,000/- to son Raphael, and Rs. 1,00,000/- to son George, within 5 years of death of both the parents. Reportedly, if the said amount is not paid to the respective children, they can have a charge on the schedule properties to recover the amounts.

4. Respondent Nos. 1 to 5 in the Civil Appeal filed OS No. 722/2009 before the Munsiff Court, Ernakulam, against the Appellant and three others for the

reliefs of partition of the plaint schedule properties into eight equal shares by meets and bounds and allotment of 1/8th share to each one of the children of Pius and Philomina. The plaint prays for the perpetual injunction restraining the Appellant from alienating the property or creating third-party interests.

5. OS No. 722/2009 was dismissed on 03.09.2011. Respondent Nos. 1 to 5 filed AS No. 6 of 2012, and the learned Additional District Judge vide the decree and judgment dated 26.08.2013 dismissed the appeal. Respondent Nos. 1 to 5 filed RSA No. 94/2014 before the High Court of Kerala at Ernakulam. Through the impugned judgment, the second appeal was allowed, and hence, the Civil Appeal was filed at the instance of the 1st defendant. The impugned judgment placed reliance on Section 67 of the Indian Succession Act, 1925 ('the Act'). It allowed the appeal by recording a finding that one of the attesting witnesses/Ponsy (DW5) is the wife of the Appellant, and consequently, by operation of Section 67 of the Act, the testamentary succession in favour of Appellant, being void, fails as a testamentary succession.

6. We have heard Learned Senior Counsel, Mr. V. Chitambaresh and Mr. Mathai M. Paikaday, and the Learned Counsel Mr. Akshay Sahay for the Appellant and Respondents.

7. It is argued for the Appellant that the impugned judgment exceeded the jurisdictional limitation of Section 100 of the Civil Procedure Code, 1908 ('the CPC').

7.1 The second appeal was admitted on the substantial questions of law raised in the memorandum of appeal. However, the second appeal has been allowed on an additional question of law framed by the Court, which reads as follows:

"Whether Ext. A4/B3 Will is void under Section 67 of the Indian Succession Act in view of the attestation of the same, who is the first defendant, and, DW6, who is the husband of the third defendant, since benefits are reserved in the said Will in favour of those defendants?"

7.2 The impugned judgment refers to an opportunity of further hearing given to the counsel on the additional question of law framed by the Court. According to him, the same should not have been at the first instance framed or answered. To be precise, the additional question of law was framed without any basis in the pleadings or evidence, and was not even put as a suggestion to the witnesses. The parties to the litigation are brothers and sisters. Respondent Nos. 1 to 5 have chosen to regulate the succession to Plaint A and B schedule properties from testamentary to intestate succession. The emphasis was on the capacity of late Pius and Philomina in executing a valid and binding will regulating the succession to the scheduled properties. Therefore, the Appellant was invited to join issue on the proof of Exhibits B-2 and B-3. The Appellant discharged the burden to claim testamentary succession to the suit properties. The findings of fact on valid execution and sound disposing state of testators are concurrent findings of fact by all three courts. The High Court relied on Section 67 of the Act and declared Exhibit B-3 as a void bequest in favour of the Appellant. The High Court's findings grant a new prayer based on an entirely new reasoning. In this light, it is contended that Respondent Nos. 1 to 5 have chosen a plea, namely, that the testators were not having a sound disposing state of mind, and that the registered will dated 27.01.2003

is not out of their free will. The impugned judgment, adverting to a new case, ought not to have ignored the validly executed and proved will. An argument has been advanced on the interpretation of Section 67, and also that the grounds available to challenge Section 67 of the Act as violative of equality of law and equal protection of law under Article 14 of the Constitution of India. The courts are under an obligation to give effect to the disposition contemplated by the testator once the execution of the will dated 27.01.2003 is proved in accordance with law. He prays for the setting aside of the impugned judgment.

8. Mr. Mathai M. Paikaday, appearing for Respondent Nos. 1 to 5, contends that though the impugned judgment refers to an additional question of law, it is, in fact, a substantial question of law framed by the High Court under Section 100(5) of the CPC. The impugned judgment records that further opportunity was afforded to the parties to address the Court on the additional question of law framed by the Court. There is substantial compliance with Section 100 of the CPC. He further argues, to sustain the findings recorded on the additional question of law, that the finding is not based on an incorrect plea or fact. There is no gainsaying that DW5 is the wife of the Appellant, and pleadings and issues are absent on the applicability of Section 67 of the Act. A plain reading of Section 67 makes the bequest in favour of the Appellant void. Section 67 has been on the statute book for 100 years, and the effect of being void once the circumstances are satisfied has stood the test of time. The learned senior counsel argues that the points urged by the Appellant do not fall within the ambit of Article 136 of the Constitution of India, much as the succession to the suit schedule is guided by intestate succession and all the children of Pius and Philomina would be entitled to a 1/8th share. Advocate

Akshay Sahay, appearing for Respondents, adopts the argument of the Appellant and contends that the other attesting witness is also the son-in-law of the executants of the will. The wish and desire of the testators must be respected, and the opening of intestate succession would defeat the last wish of late Pius and late Philomina.

9. We have taken note of the submissions and perused the record. Before we take up the submissions of the learned counsel, we preface the journey of the parties in the present litigation by setting out the pleadings and the resulting issues between the parties.

10. The plaint in OS No. 722 of 2009 is summarised by retaining the cause pleaded by Respondent Nos. 1 to 6:

10.1 The plaintiffs sought partition of the properties into eight equal shares, along with a permanent prohibitory injunction against alienation. The plaintiffs contend that, though the deed dated 15.12.1999 was styled as a settlement deed, it was expanded for the marriage of two sisters. The plaintiffs assert that their father, C.R. Pius, suffered from physical and mental ailments, including cerebral palsy, senile changes, and Parkinson's disease, from 1998 until his death, rendering him mentally incapable of making rational decisions. They, hence, state that the said will carries no legal validity, as the first defendant, his wife and the third defendant’s husband misrepresented the mother.

10.2 They note that the joint will was falsely created and forged by the first defendant, his wife (DW5), and the husband of the third defendant (DW6) through misrepresentation and undue influence over their incapacitated father and elderly mother. They claimed the mother was too old to understand the document properly.

10.3 The plaintiffs asserted that their parents died intestate, and therefore, all children held joint ownership and possession of the plaint schedule properties. The defendants are trying to alienate the property on the basis of the alleged will, ignoring the plaintiffs' 1/8th share each in the plaint schedule properties. Furthermore, the plaintiffs are not interested in continuing with joint possession and therefore seek partition.

10.4 The plaintiffs alleged that the cause of action arose on 24.11.2004 (father's death) and 27.11.2008 (mother's death).

11. The first defendant, to resist the claim of intestate succession, has set up Exhibit B-2, a registered settlement deed. The pleadings in the written statement are summarised as follows:

11.1 The defendants refuted the claims of the plaintiffs and asserted that the plaintiffs have never obtained any ownership, co-ownership or are in joint possession of the plaint schedule property. The defendants asserted that the plaintiffs are only entitled to get the monetary claims as stipulated in the registered will. If the claims are unfulfilled within the 5-year period after the will comes into force, the defendants can create a charge over the properties.

11.2 They state that the plaintiffs have admitted the execution of the settlement deed dated 15.12.1999, in which late Pius and the 1st defendant are the witnesses, and the executant is late Philomina. Hence, it is admitted that they were capable of executing the documents. The settlement deed was executed after Pius and Philomena decided to execute a joint will in respect of the remaining properties. Thus, their mental capacity to execute the joint will is

admitted. They further contend that the plaintiffs cannot blow hot and cold at the same time, and are estopped in fact and law.

11.3 It is asserted that the 1st defendant took over the possession of the plaint schedule after the death of Pius on 24.11.2004, and Philomina did not have any objection regarding this possession. The only right created in favour of the plaintiffs is the monetary claims (mentioned in the will), and a substantial amount was also paid as the plaintiff's share during their marriage.

11.4 The defendants claim that the settlement deed was executed in favour of the fourth plaintiff for the construction of a residential building for the fourth plaintiff and not for the marriage of two sisters of the fourth plaintiff**.** The defendants further asserted that he looked after his father and mother until his death.

11.5 The defendants contend that after the execution of the will on 27.01.2003, the father was still alive for a period of one year and some months in good health. During this period after execution of the will, there was no objection by the plaintiffs or the testators.

12. The Trial Court framed the following issues:

> *"1) Whether the will bearing No. 22/2003 of S.R.O Ernakulam is valid and genuine?*
>
> *2) Whether the plaint schedule property is partable? If so what is the share of each party?*
>
> *3) Whether the plaintiffs are entitled for a decree of permanent prohibitory injunction as prayed for?*
>
> *4) Relief and cost."*

13. The categorical findings of the Trial Court are that:

13.1 The execution of the will was valid and genuine, and it also concluded that C.R. Pius was capable of making rational decisions at the time of the will's execution. He was not suffering from any mental disease. This was supported by the evidence of DW7 (Neurologist), who deposed that Pius was not suffering from any ailment or from any kind of mental disease. In fact, Pius had witnessed the settlement deed executed in 1999, thereby proving his sound mental capacity.

13.2 No evidence was present that the execution of the will by Philomina Pius was vitiated by fraud or misrepresentation. It considered the evidence of DW1 to DW4 and concluded that the execution of Exhibit B-3 is not vitiated by fraud or misrepresentation.

13.3 DW5 (Appellant's wife) complied with Section 63(c) of the Act, testifying that she witnessed the testators' signatures and signed in their presence. Despite DW6's (Antony) non-compliance with Section 63(c) of the Act (*animo attestandi*), the combined evidence of DW3 (scribe), DW4 (Sub-Registrar), and DW5 sufficiently proved attestation of Exhibit B-3.

13.4 It held that the presence or active participation of the Appellant or his wife (DW5) as a witness did not raise doubt on the genuineness of the will or the testamentary capacity of the testators.

13.5 Based on the valid will, the plaint schedule properties were deemed not partible, and other legal heirs were only entitled to the specified monetary amounts.

13.6 Hence, it dismissed the suit for partition.

14. In AS No. 6 of 2012, the Appellate Court, on the competence, capacity, and the execution of Exhibit B-3 in a free and sound disposing state of mind, affirmed the findings of the Trial Court.

14.1 The Appellate Court affirmed that Pius was mentally and physically capable of making rational decisions, considering that no record of treatment between 14.09.2002 and 06.11.2004 for any ailment was placed. Thus, the plaintiffs' contention that he was in poor health is unfounded. The court stated that the argument that he was in a vegetative state was not established.

14.2 The court accepted DW5's (Appellant's wife) testimony regarding the will's execution and DW4's (Sub Registrar) testimony that the executants signed before attesting witnesses, substantiating proper attestation under Section 63 of the Act. DW6's testimony was not relied upon as he did not witness the executant's signature.

14.3 The fact that the will remained un-cancelled by the parents until their deaths (Pius died 1 year 10 months after execution, mother much later) was deemed to probabilise its voluntary execution without coercion. The court upheld the reason for excluding the 4th plaintiff (Sebastian) due to his prior receipt of land via the settlement deed. It noted that specific monetary provisions for other children indicated the parents' due deliberation.

14.4 The first appellate Court concurred with the Trial Court that the will was genuine and free from suspicious circumstances.

15. The contentions canvassed by the respective counsel would present the following points for consideration.

Point 1: Whether the High Court, while invoking the Proviso to Section 100(5) of the CPC, was correct in referring to and applying Section 67 of the Act?

Point 2: Whether Section 67 of the Act is attracted to determine the succession to the suit schedule property or not?

16. The points for consideration are independent. The need and necessity to take up point no. 2 arises from the consideration and conclusion recorded on point no. 1.

POINT 1

17. The impugned judgment records that an additional substantial question of law (*sic*) was framed and opportunity was provided to the counsel to address the Court on the said question of law. Section 100 of the CPC reads as follows:

> *100. Second appeal.--(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.*
>
> *(2) An appeal may lie under this section from an appellate decree passed ex parte.*
>
> *(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.*
>
> *(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.*
>
> *(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:*
>
> ***Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any***

other substantial question of law, not formulated by it,

if it is satisfied that the case involves such question.

(Emphasis supplied)

18. In the above background, before we examine the procedure followed by the High Court, a few precedents on the point are noted. The principles emanating from precedents on Section 100(5) of the CPC can be summed up as follows:

18.1 A substantial question of law must be grounded in the parties' pleadings and the findings of lower courts. Thus, it must be exercised if it is so fundamental that it goes to the very root of the matter.[1]

18.2 The jurisdiction to frame a new question of law is exceptional and should not be exercised routinely unless there is a strong and convincing reason to do so.[2]

18.3 The proviso allows the court to hear an appeal on "any other substantial question of law," which implies that at least one substantial question of law must have been formulated at the admission stage. The power to reformulate or add a question arises only if a substantial question of law has already been framed.[3]

18.4 The High Court must be "satisfied" that the new question is a substantial question of law and not a mere legal plea.[4]

18.5 The court is mandatorily required to record its reasons for framing an additional substantial question of law.[5]

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[1] Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179.
[2] Mehboob-Ur-Rehman v. Ahsanul Ghani, (2019) 19 SCC 415.
[3] Gian Dass v. Gram Panchayat, (2006) 6 SCC 271; Kirpa Ram v. Surendra Deo Gaur, (2021) 13 SCC 57.
[4] Kshitish Chandra Purkait v. Santosh Kumar Purkait, (1997) 5 SCC 438.
[5] R. Nagraj (Dead) through LRs. and Anr. v. Rajmani and Ors, (2025) INSC 478.

18.6 The opposite party (the respondent) must be given a fair and proper opportunity to contest the new question. Parties must be put on notice and be allowed to present their arguments on the newly framed question. Framing a question while dictating the judgment without hearing the parties would be improper.[6]

19. The ratio of the precedents is that the High Court is competent and endowed with discretionary jurisdiction to formulate a substantial question of law not stated when the second appeal was admitted. The High Court is entitled to formulate an additional substantial question of law for reasons to be recorded if the High Court is of the view that the case involves such a question of law. The proviso to sub-section 5 of Section 100 of the CPC comes into operation in exceptional cases, albeit for strong and convincing reasons to be specifically recorded by the High Court. Respondent Nos. 1 to 5 have pleaded a lack of a sound disposing state of mind to late Pius. The pleadings refer to the line of treatment given to the late Pius. The plea needed for invoking Section 67 of the Act, either by choice or inadvertence, is not pleaded by Respondent Nos. 1 to 5. Issue No. 1 deals with whether Exhibit B-3-will is valid and genuine. Mr Mathai does not dispute that the issue ought to have been different, and from the expressions used in the issue, consideration falls under Section 100(5) of the CPC.

20. We have perused the plaint, and the plaint refers to the will and the allegation that "[s]ince the will executed by fraud and misrepresentation upon the ailed mother and forced upon the ailed father, it carries no legal validity, and it is to be neglected." The plea under Section 67 of the Act can be an additional or alternative plea, which would have resulted into an additional

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[6] Suresh Lataruji Ramteke v. Sumanbai Pandurang Petkar, (2023) 17 SCC 624.

issue, and an establishment of a relationship, where one of the attestors to the legatee of the will would have fallen for consideration. Introducing Section 67 at the stage of Second Appeal does not merely raise a new legal argument; rather, it creates an entirely new case for the plaintiffs. The original case required the defendant to prove the testators' mental capacity and also the absence of suspicious circumstances in bringing into existence Exhibit B-3. A case under Section 67 of the Act would require the Appellant to meet a completely different legal challenge, one which is based on the identity of an attesting witness and the legal consequences arising from the said identity.

21. Section 141 of the Evidence Act, 1872 defines a 'leading question as any question that "suggests" the answer which the person questioning expects to receive.' We have perused the evidence of DW1 and DW5, and the suggestion which is otherwise available is not put to the witnesses. The importance of a suggestion in oral evidence of a party can crisply be summarised as follows:

21.1 In *Browne v. Dunn*,[7] the English House of Lords established a rule of practice which dictates that if a cross-examiner intends to later adduce evidence or make submissions that contradict the testimony of a witness, they must first put the substance of the contradiction to the witness during cross-examination. The purpose is to afford the witness a fair opportunity and is rooted in the principle of *Audi Alteram Partem*. This principle has also been upheld in Indian decisions.[8]

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[7] (1893) 6 R 67.
[8] *See*, Laxmibai v. Bhagwantbuva, AIR 2013 SC1204

21.2 In a 1954 decision of the Bombay High Court,[9] it was noted that failing to suggest contrary points during cross-examination can weaken a party's position and can be interpreted as an implicit acceptance of the witness's testimony. While the case pertained to criminal defamation, this principle has also been applied in civil litigation. For instance, in *Radha Kishan Aggarwal v. Network Ltd*,[10] the Delhi High Court held that since no suggestion was given to the plaintiffs' willingness to dispute the market rent, the witness's testimony on rent was accepted as true.

21.3 Absence of a suggestion to a witness may not be the deciding factor in determining the outcome of a plea. However, in the wheel of consideration of all facts in issue and their legal implication, the absence of suggestion constitutes an important cog in the wheel of consideration. We hasten to add that the timing, absence of suggestion, relevance and its impact are left to the experience, wisdom and discretion of the Judge appreciating a case.

22. We have perused the evidence of DW1, the propounder of Exhibit B-3, and DW5, an attesting witness to Exhibit B-3. The evidence is bereft of at least a suggestion that would be expected in a matter as serious as the present. The Court has power and jurisdiction to suit or non-suit a party on the adduced pleadings, issues and evidence, but not on a totally new and unexpected case, more particularly at the stage of Section 100. The root of the matter is not an abstract legal issue floating freely, but it is fundamentally anchored to the specific cause of action and the factual matrix pleaded by the

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[9] Yeshpal Jashbhai Parikh (Original Accused) v. Rasiklal Umedchand Parikh (Original Complainant, Opponent, 1955 AIR BOM 318.

[10] 2011 SCC OnLine DEL 3896; See also, *JS Bhalla v. GJ Bhawnani,* 23 (1983) DLT 125.

parties. From the beginning, the plaintiffs' case was built on a factual challenge; wherein, they contend that (i) the testators lacked a sound disposing state of mind, and (ii) the will was a product of forgery, misrepresentation, and undue influence. These two aspects have been successfully established by the Appellant, and the findings favour the Appellant

23. Therefore, in fine, we record that in the circumstances of this case, the High Court fell in error by not recording reasons for framing the additional substantial question of law. The additional substantial question of law may be an abstract application of Section 67 without verifying the foundational facts and circumstances. The admission of a party must be in the manner known to law. An admission in pleading and evidence is certainly an admission. By appreciating an admission, the Court is entitled to apply the consequence of law. In the analysis, we notice that the relationship of DW5 with DW1 is either assumed by the Court or not contested by the parties on any of the grounds available, namely, want of pleadings, etc., before the High Court. The above consideration leads to the irrefutable conclusion that an additional substantial question of law is framed without pleadings, issues and reasons and a finding is recorded. The Court is now confronted with a will duly executed and proved, and not given effect to by applying Section 67 of the Act. It is axiomatic, but still referred to in often quoted decisions,[11] that the wish of a testator as expressed through a duly proved will is upheld by the Court, but not open up succession contrary to the arrangement made by the testator. Thus, the point is answered in favour of the Appellant and

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[11] *Gnanambal Ammal v. T. Raju Ayyar*, 1950 SCC 978; 2. *K.S. Palanisami v. Hindu Community in General & Citizens of Gobichettipalayam*, (2017) 13 SCC 15.

consequently, the impugned judgment is set aside. For the above reasons, point no. 2 is not, in the peculiar facts and circumstances of the case, examined and answered.

24. The conclusion to the above points does not give quietus to the obligations fastened on the Appellant by late Pius and late Philomina. Exhibit B-3 stipulated a few obligations for discharge by the Appellant. The parties have been agitating over whether testamentary or intestate succession is applicable to the plaint schedule. With the findings recorded by the present judgment, testamentary succession is again opened. The Appellant has neither deposited nor paid the amount directed in Exhibit B-3 to any of the other beneficiaries. The parents made a contemporaneous arrangement in bequeathing the suit schedule to the Appellant. The testamentary succession finally opens through the present adjudication, and therefore, it is incumbent upon the Appellant to compensate the other legatees within three months from today as summarised in the following table:

PARTY NAME AND POSITION IN CIVIL APPEAL	**AMOUNT STIPULATED IN THE WILL**	**COMPENSATION AWARDED BY THIS COURT**
Maria (Deceased) [Represented by Kavitha Antony/R3 and Savitha Sachin/R8]	Rs. 1,00,000/-	Rs. 10,00,000/-
Desty Thomas/R5	Rs. 50,000/-	Rs. 5,00,000/-
Clara Jacob/R6	Rs. 50,000/-	Rs. 5,00,000/-
C.P. Joseph/R1	Rs. 1,00,000/-	Rs. 10,00,000/-
C.P. Raphael/R2	Rs. 1,00,000/-	Rs. 10,00,000/-

C.P. George/R4	Rs. 1,00,000/-	Rs. 10,00,000/-

25. In default of payment, the amount determined by this Court will carry an interest of 6% per annum, and also charge for realising the same will be on the plaint schedule.

26. We hasten to add that extraordinary care and caution have to be observed in the exercise of jurisdiction under Article 136 of the Constitution of India. It does not confer a right of appeal, but it vests with this Court a vast discretion, which is only to be exercised by considerations of justice, call of duty and the eradication of injustice. This overriding power is exercised only in exceptional cases where special circumstances exist.

27. For the above reasons, the appeal is allowed and there is no order as to costs.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[S.V.N. BHATTI]

New Delhi;
September 03, 2025.